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the agreement is approved, to the best of applicant's knowledge;

(g) If there is a lessening of such alternatives, an estimate of the public benefits that will accrue from approval, or new competition that will arise, which would offset such lessening;

(h) A narrative assessment of how the pooling arrangement will affect present and future competition in the area, including a description of the projected volume of traffic, the revenues, and the commodities which will be subject to the pooling agreement;

(i) Certification that rates set for traffic moving under the agreement do not violate the restrictions on collective ratemaking contained in 49 U.S.C. Subtitle IV and Commission regulations;

(j) A narrative statement as to the relative transportation importance of the pooling agreement as it would affect the public and the national transportation system;

(k) If any known non-pooling carriers authorized to transport the subject traffic are not included in the pooling arrangement explain why, and explain whether inclusion would enhance or restrain competition;

(l) A statement of the energy and environmental effects of the agreement, if any; and

(m) Certification by applicant, or its representatives, that the representations made in the application are, to the best of applicant's knowledge and belief, true and complete.

As appendices, applicants must submit: (1) A copy of the pooling agreement; (2) a copy of the specific operating authority of each carrier which is the subject of the pooling agreement; and (3) a caption summary (for FEDERAL REGISTER publication) of the pooling transaction sought to be approved.

[46 FR 21181, Apr. 9, 1981. Redesignated and amended at 47 FR 49595, Nov. 1, 1982]

§ 1184.3 Processing pooling applications.

After the pooling application is received (not less than 50 days before the effective date specified in the pooling agreement), the Commission will either reject it or determine initially whether the pooling agreement is of

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major transportation importance and whether there is a substantial likelihood that the pooling agreement will unduly restrain competition. If neither of these two factors is present, the application will be granted without further hearing. Where either factor is found to exist, the application will be published in the FEDERAL REGISTER using the caption summary filed with the application, and a hearing will be scheduled (normally to receive written verified statements) to consider the issues further. In this second phase of the proceeding, the Commission will consider whether the pooling agreement would be in the interest of better service to the public or of economy of operation and whether it will unduly restrain competition.

PART 1185—INTERLOCKING OFFICERS

Sec.

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AUTHORITY: 49 U.S.C. 10321, 11322, and 10505; 5 U.S.C. 553 and 559.

§ 1185.1 Scope of exemption.

(a) Subject to the exception in paragraph (c) of this section, "interlocking directorates," as defined in paragraph (b) of this section, are exempt from the prior approval requirements of 49 U.S.C. 11322(a).

(b) An "interlocking directorate" exists whenever an individual holds the position of officer (as defined in § 1185.3) or director of one carrier and assumes the position of officer or director of another carrier.

(c) The exemption in paragraph (a) of this section does not apply to those interlocking directorates sought where the individual is already an officer or a director of a Class I railroad and seeks to become an officer or director of another class I railroad. An application

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under 49 U.S.C. 11322(a) or a petition for exemption under 49 U.S.C. 10505 for authority for this type of interlocking arrangement must be filed.

[53 FR 39097, Oct. 5, 1988; 53 FR 40068, Oct. 13, 1988, as amended at 56 FR 18533, Apr. 23, 1991]

§ 1185.2 Meaning of term “carrier.”

The term “carrier” is used in this part as it is defined in 49 U.S.C. 11301(a)(1).

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.3 Application of regulations.

The regulations in this part apply to any person authorized by or undertaking for each of two or more class I rail carriers to perform the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent, or chief purchasing agent of a carrier.

[53 FR 39097, Oct. 5, 1988]

§ 1185.4 Authorization.

Authorization will be granted only upon application as provided in this part.

[47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.5 Application for order.

An application for such authorization may be made by any person in his own behalf.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.6 Contents of application.

Each application shall state the following:

(a) The full name, occupation, business address, place of residence, and postoffice address of the applicant.

(b) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of and accu-

rately describe the securities, owned or held by him, of each carrier for which he seeks authority to act. Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by him, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.

(c) Each and every position with any carrier:

Which is held by the applicant at the time of the application; and which he seeks authority to hold, together with the date and manner of his election or appointment thereto and, if he has entered upon the performance of his duties in any such position, the nature of the duties so performed and the date when he first entered upon their performance. (A decision authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize him to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(d) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in transportation by railroad subject to the act. If any such carrier neither operates nor owns any railroad, transportation by which is subject to the act, there shall be filed with the application, as a part thereof, a copy of such carrier's charter or certificate or articles of incorporation, with amendments to date. When such copy has once been filed with the Commission, reference thereto, with amendments, if any, will suffice.

(e) Thereafter a full statement of pertinent facts relative to any carrier which does not make annual reports to the Commission, authorization for a position with which is sought.

(f) Full information as to the relationship, operating, financial, competitive, or otherwise, existing between the

carriers covered by the requested authorization.

(g) Specify every corporation—industrial, financial, or miscellaneous—of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(h) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(i) Whether or not any other application for authority has been made in behalf of the applicant and, if so, shall show the date and finance docket number thereof, by who made, and the action thereon, if any.

(j) When application has been made in behalf of any person, a subsequent application by him need not repeat any statement contained in the previous application but may incorporate the same by appropriate reference.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.7 Subscription and verification of application.

The original application shall be signed by the individual applicant, and shall be verified under oath in substantially the following form:

State of _____
County of _____, ss.
_____ make _____ oath and say—that _____ hold—no position as officer or director of any carrier or other corporation except as indicated in the foregoing application, and that all of the statements contained therein are true and correct to the best of _____ knowledge and belief.

(Signature of applicant)
Subscribed and sworn to before me, a _____ in and for the State and county above named, this _____ day of _____, 19____.

[SEAL]

My commission expires _____

[32 FR 20095, Dec. 20, 1967. Redesignated at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.8 Number of copies; form and style.

The original application and 10 copies thereof shall be filed with the Commission. Each copy shall bear the dates

and signatures that appear on the original and shall be complete in itself, but the signatures in the copies may be stamped or typed and the notarial seal may be omitted. The application shall be submitted in typewritten or printed form, on paper not more than 8½ inches wide and not more than 12 inches long, with a left-hand margin of 1½ inches, and if typewritten, the impression must be on only one side of the paper, and must be double spaced.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982; 53 FR 19303, May 27, 1988. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.9 General authority.

Any person, who has been or shall hereafter be authorized to hold positions with a carrier or with a company or companies subsidiary thereto or affiliated therewith, may include in any application made by him pursuant to the foregoing regulations in this part a request for a decision authorizing him to hold generally, in addition to the positions so specifically authorized, a directorship or any office or offices with the first-mentioned carrier and all companies subsidiary thereto or affiliated therewith, or the properties of which are operated or used by the carrier, either separately or jointly, with other carriers. Like general authority may be applied for by the first-mentioned carrier in behalf of any person or persons to whom such specific authority has heretofore been granted: *Provided*, That such general authority may not be applied for by such carrier when the person for whom authority is desired holds a position or positions with any carrier or carriers not subsidiary to or not affiliated with the first-mentioned carrier, or the properties of which are not operated or used by the first-mentioned carrier, either separately or jointly with other carriers. Every carrier application shall be verified by an executive officer having knowledge of the facts.

[32 FR 20095, Dec. 20, 1967. Redesignated and amended at 47 FR 49595, Nov. 1, 1982; Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.10 Common control.

It shall not be necessary for any person to secure authorization under the

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foregoing provisions to hold the position of officer or director of two or more carriers, if such carriers are operated under common control or management, either.

(a) Pursuant to approval and authority of the Commission granted under 49 U.S.C. 11343–11344, or

(b) Pursuant to an exemption authorized by the Commission under 49 U.S.C. 10505, or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

[35 FR 7651, May 16, 1970, as amended at 44 FR 75386, Dec. 20, 1979. Redesignated and amended at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

§ 1185.11 Jointly used terminal properties.

Any person holding the position of officer or director of a carrier is hereby relieved from the foregoing provisions to the extent that he may also hold a directorship and any other position to which he may be elected or appointed with a terminal railroad the properties of which are operated or used by such carrier jointly with other carriers.

[35 FR 7651, May 16, 1970. Redesignated at 47 FR 49595, Nov. 1, 1982. Redesignated at 53 FR 39097, Oct. 5, 1988]

PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

Sec.

1186.1 Scope of exemptions.

1186.2 Notice of exemption.

1186.3 Attachments.

1186.4 Temporary authority.

1186.5 Filing fees.

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1186.7 Effective date of exemption.

1186.8 Complaints.

1186.9 Safety fitness.

AUTHORITY: 49 U.S.C. 11321, 11343(e); 5 U.S.C. 553; and 21 U.S.C. 853a.

§ 1186.1 Scope of exemptions.

Any transaction under 49 U.S.C. 11343(a)(1)–(5) among motor carriers of property or between them and noncarriers is exempt from the requirements of 49 U.S.C. 11343, 11344, and 11345a, subject to the right of employees and oth-

ers to file complaints as set forth in § 1186.8.

[53 FR 4853, Feb. 18, 1988]

§ 1186.2 Notice of exemption.

To qualify for an exemption under § 1186.1, the participants in the transaction must file an original and four copies of a joint Notice of Exemption with the Commission. The Notice of Exemption shall contain the following information:

(a) Names and addresses of the carriers or other parties involved;

(b) A brief, but specific description of the nature of the transaction;

(c) Certification of the accuracy of the contents of the notice by, and signature of, the persons who control the carriers or other parties involved in the transaction; and

(d) A jurisdictional statement stating why the transaction is subject to 49 U.S.C. 11343–11344.

(e) In purchase of assets or merger transactions, certification by the party acquiring any motor carrier operating rights through the transaction that it is not domiciled in Mexico nor owned or controlled by persons of that country.

(f) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name, that individual must complete the following certification:

I, _____ (Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

[53 FR 4853, Feb. 18, 1988, as amended at 54 FR 35346, Aug. 25, 1989; 54 FR 48251, Nov. 22, 1989]

§ 1186.3 Attachments.

Attachments (an original and 10 copies) to the Notice of Exemption filed with the Commission should include:

(a) A short summary of the transaction to be published as a notice to the public; and